

RECEIVED
CENTRAL FAX CENTER

SEP 24 2004

FROMMER LAWRENCE & HAUG LLP

4660 La Jolla Village Dr., Suite 850

San Diego, CA 92122

Telephone: (858) 731-5000

Facsimile: (858) 731-5001

FACSIMILE COVER LETTER

To: Examiner Robin Hylton
Firm: USPTO - ART UNIT GROUP 3720
Facsimile No.: (703) 872-9306
From: Leonard J. Santisi
Date: September 24, 2004
Re: U.S. Patent Application Serial No. 09/889,006
"PACK"
Our Ref.: 4000004-2006 (formerly 11042.00)

No. of Pages: 7
(including cover page)

If you do not receive all pages or are unable to read the transmission, please call and ask for Leeann @ Ext. 5025

CONFIDENTIALITY NOTICE

The documents accompanying this transmission contain confidential information intended for a specific individual and purpose. The information is private, and is legally protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this facsimile is strictly prohibited.

00144934

PATENT
4000004-2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants : W. Zoller et al.
Serial No. : 09/889,006
For : PACK
Filed : July 6, 2001
Examiner : Hylton, Robin Annette
Art Unit : 3727

RECEIVED
CENTRAL FAX CENTER
SEP 24 2004

4660 La Jolla Village Drive
Suite 850
San Diego, CA 92122
(858) 731-5000

APPEAL BRIEF OF APPELLANTS

Via Facsimile

I hereby certify that this correspondence for Application No. 09/889,006 is being facsimiled to the United States Patent and Trademark Office via fax number (703) 872-9306 on September 24, 2004.

Leeanne Lawlor

(Typed or printed name of person signing this certificate)



(Signature of person mailing paper or fee)

Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the notification of non-compliance with the requirements of 37 CFR 1.192(c) mailed on September 7, 2004 and having a time for response up to and including October 7, 2004. This is an corrected appeal from the Final Rejection by the Examiner dated August 19, 2003, rejecting Claims 7-9, which constitute all the pending claims in this case. The Brief submitted on May 18, 2004 was accompanied by the requisite fee set forth in §1.17(f). If, however, any additional fees are required, please charge Deposit Account No. 50-0320.

PATENT
4000004-2006

(1) REAL PARTY IN INTEREST

The real party of interest is the assignee of this applications, Mars, Inc.

(2) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant or assignee which will direct by affect or be directly affected by or have bearing on the Board's decision in the appeal.

(3) STATUS OF CLAIMS

Claims 1 through 6 have been cancelled and Claims 7-9 remain in this application.

Claims 7-9 have been finally rejected.

(4) STATUS OF AMENDMENT

Claims 7-9 have been entered for purposes of appeal in an amendment filed after final rejection, see Advisory Action mailed March 24, 2004. The prior rejection under 35 U.S.C. § 112 has been withdrawn.

(5) SUMMARY OF INVENTION

The invention provides a package, for example to hold animal food, to insure comfortable handling both during pouring of the contents and in lifting and carrying the package.

Specification at p. 1, lines 23-24.

Ease of handling is accomplished by providing a handle eccentrically displaced on one of the faces of the face parallel or perpendicular to the flap running and positioned eccentrically, at an angle and along the axis symmetry of the pack. Specification at pp. 12, 26-27, Fig. 1(a). A preferred embodiment of the angle is in the range of 5° to 30° and preferably 10°.

This disposition of the handle allows convenient pouring, lifting and carrying comfort. Specification at p. 3, lines 17-19. The eccentric fitting of the handle insures an automatic

PATENT
4000004-2006

inclination of the pack in the pouring direction so that pouring of the contents is facilitated.

Specification at p. 2, lines 20-22.

Figs 1(a) and 1(b) show a pack in which the handle is eccentrically fitted on a pack at an angle and along the axis of symmetry 1. Specification p. 3, lines 22-25.

Fig. 2 shows the sides and inclination angles with the handle eccentrically fitted to a pack. Specification at p. 4, lines 7-8. The letter b represents the side length of the pack plus the handle height and c is the eccentricity of the hand support B of the handle from the median perpendicular of the lateral face 3 which passes through the center of gravity S as well as point A. Specification at p. 4, lines 8-12.

With the disposition the handle applied to a pack which is an approximate parallelepiped, Specification p. 6, lines 4-6, pouring of the contents is facilitated especially following a partial consumption of the material from the pack as a greater inclination angle is necessary for comfortable pouring of the remaining material. Specification p. 6, lines 8-11.

(6) ISSUES

The Examiner has finally rejected claims 7-9 under 35 U.S.C. § 103(a) as being unpatentable over Sharp (GB1,545,469). The Examiner stated Sharp teaches a pack with at least one holding and carrying handle comprising at least one flap and a plurality of pack faces. Sharp does not show an angle of inclination of the handle axis of symmetry. The Examiner, without citation to another reference, held it would have been obvious to one skilled in the art to provide the handle along an axis of symmetry at an angle in the range of 2° to 20° parallel or perpendicular to the pack face.

The issue is whether it would have been obvious to one of ordinary skill in the art to make the angle of inclination of the handle as suggested by the Examiner.

PATENT
4000004-2006**(7) GROUPING OF CLAIMS**

Claims 7-9 are grouped.

(8) ARGUMENT**CLAIMS 7-9 ARE PATENTABLY DISTINGUISHABLE
FROM THE "SHARP" REFERENCES.**

The Examiner's final rejection based upon 35 U.S.C. § 103(a) relies on a single reference, Sharp (GB 1,545,469). Sharp discloses a standard box 1 of rectangular shape with a longitudinal face 2 having a slot 3 through which a handle assembly 4 extends. The slot 3 and handle assembly 4 are aligned with the axis of symmetry of the face 2 and is not disposed at an angle. The box or carton is not intended to be used for pouring the contents thereof so there is no suggestion or teaching to place the handle at an angle. Despite this lack of teaching or suggestion, the Examiner's position is that it would have been obvious to one of ordinary skill in the art to provide the handle along an axis of symmetry at angle in the range of 2° to 20° parallel or perpendicular to a pack face, since it has been held that where the general condition of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With regards to claim 9, the Examiner held it would also have been obvious to provide an angle of about 10°.

The purpose of the invention is to provide a pack for, e.g., animal food and to facilitate pouring of the food from the pack with ease and facility. It was found that offsetting the handle by which the pack is held by an angle from the axis of symmetry of one of the pack faces in an angle parallel or perpendicular to a plane parallel to the one pack face provides ease and facility in pouring the contents.

The Examiner in the first office action cited a number of references to packs, some with handles, but none taught or suggested disposing the handle at an angle to provide ease and

PATENT
4000004-2006

facility to pouring of the contents. Applicants in an Information Disclosure Statement cited, among other references, the Sharp reference ultimately relied upon by the Examiner.

It is believed axiomatic by now that for a rejection under 35 U.S.C. § 103 there must be some teaching or suggestion in the prior art to make the claimed combination. Here the only reference relied upon, Sharp, fails to suggest the beneficial and desirable orientation of the handle at the angle to permit ease and facility in pouring the contents of the pack.

Indeed, Sharp does not even disclose a carton in which the contents are to be poured. Therefore there is no motivation or suggestion in Sharp to provide a handle at an angle to provide this benefit.

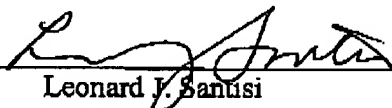
The Examiner has no basis in fact to conclude that it would have been obvious to modify the handle in Sharp at an angle.

(9) CONCLUSION

From the above discussion, the cited prior art does not render obvious the claimed invention as recited in Claims 7-9 under 35 U.S.C. § 103(a). It is therefore submitted that the Examiner erred in rejecting Claims 7-9 and the reversal of such rejection by this honorable Board is respectfully solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Appellants

By 
Leonard J. Santisi
Reg. No. 24,135
(858) 731-5000

PATENT
4000004-2006APPENDIX

Claims:

7. A pack with at least one holding and carrying handle comprising at least one flap and a plurality of pack faces, said handle fitted to one of said pack faces along an axis of symmetry of said one pack face at an angle in the range of 2° to 40° parallel or perpendicular to a plane parallel to said one pack face.
8. A pack according to claim 7 wherein the angle is in the range of 5° to 30° .
9. A pack according to claim 7 wherein the angle is about 10° .